

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA COUNTY E-9-1-1 BOARD, Complainant, vs. SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY, Respondent.	DOCKET NO. FCU-02-12
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**ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT, RESUMING
PROCEEDINGS, AND AMENDING PROCEDURAL SCHEDULE**

(Issued March 26, 2003)

On June 11, 2002, Iowa County E-9-1-1 Board (Iowa County) filed a complaint with the Utilities Board (Board) against South Slope Cooperative Telephone Company (South Slope). The filing has been identified as Docket No. FCU-02-12. In its complaint, Iowa County contends that the monthly surcharge of \$.20 per access line assessed to Iowa County by South Slope for maintenance of its E-9-1-1 database is unreasonable.

On January 23, 2003, Iowa County filed with the Board a motion for summary judgment. In support of its motion, Iowa County states that South Slope's tariff provision regarding E-9-1-1 database maintenance does not satisfy the requirements of Iowa Code § 34A.8(1) and does not provide a mechanism for the Board to review

or approve any rate that South Slope charges for database maintenance in a specific case. Iowa County contends that because of this alleged non-compliance, South Slope does not have the statutory authority to impose a data base maintenance charge on Iowa County.

On February 7, 2003, South Slope filed a resistance to Iowa County's summary judgment motion and submitted its own motion for summary judgment. In response to Iowa County's motion, South Slope asserts that its tariff is in full compliance with the language of Iowa Code § 38A.8(1) and it, therefore, has the proper statutory authority to assess a database maintenance charge against Iowa County.

In support of its motion for summary judgment, South Slope states that Iowa County's claims are contrary to the express language of Iowa Code § 38A.8(1) and that the claims are barred by the parties' contract and the doctrines of waiver, estoppel, and unjust enrichment.

On February 13, 2003, South Slope filed a motion to suspend the procedural schedule to allow the Board sufficient time to review and rule on the parties' summary judgment motions. South Slope also requested that the Board order Iowa County to re-file its direct testimony in standard testimony format and provide a more specific statement as to the legal basis for its complaint.

On February 14, 2003, the Board issued an order suspending the procedural schedule in this docket so as to have sufficient time to rule on the parties' respective summary judgment motions. In that order, the Board held South Slope's remaining

requests in abeyance pending the Board's decision on the summary judgment motions.

A ruling granting a motion for summary judgment will be made if the entire record including pleadings and affidavits on file show there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3) (formerly 237(c)). At issue in this complaint are the charges levied by South Slope against Iowa County for the maintenance and management of the E-9-1-1 database. The current record reflects that South Slope charges Iowa County a monthly surcharge of \$.20 per access line for E-9-1-1 services. Iowa County argues that this amount is unreasonable. South Slope maintains that this surcharge is fair and reasonable.

The focus of both parties' summary judgment motions is the language of Iowa Code § 38A.8(1), which provides that a "local exchange service provider shall receive as compensation for the provision of local exchange service information charges according to its tariffs on file with and approved by the Iowa utilities board." Iowa County asserts that South Slope's tariff does not comply with the language of this statute. South Slope argues that its tariff is in compliance with this statute and asserts that because its tariff is in compliance with the statute, Iowa County has no valid claim against South Slope.

The question of compliance is generally a legal issue rather than a factual issue. However, it is a material dispute in this case and one that should be reviewed by the Board on the basis of a complete record, as a determination concerning the sufficiency of the tariff language may require resolution of factual and policy issues.

In addition, the question of whether the compensation South Slope receives from Iowa County is reasonable remains another material issue that should be reviewed by the Board. Therefore, the Board will deny the parties' motions for summary judgment and establish a modified procedural schedule for the remainder of these proceedings.

Because the Board will resume the proceedings under this docket, the Board will now consider the additional questions raised by South Slope in its filing dated February 13, 2003. In that filing, South Slope requested the Board order Iowa County to submit prepared direct testimony with supporting exhibits and workpapers in the standard testimony format. South Slope also requested the Board order Iowa County to submit a more specific statement as to the legal basis for its complaint against South Slope.

On January 24, 2003, Iowa County filed direct testimony and exhibits with the Board under this docket. The testimony and exhibits however, merely adopted the information set forth in its initial complaint filed on June 11, 2002. The factual information contained in the initial complaint was verified by the supporting affidavit of Mary D. Miller. Iowa County's initial complaint was accompanied by numerous documents. The adoption of the original complaint in this case as testimony and exhibits does not provide specific testimony and exhibits that can be reviewed by the Board or responded to by South Slope in an efficient and unambiguous manner. While there is not a specified format in the Board's rules for the submission of testimony and exhibits, there is a standard format that is typically used by parties involved in proceedings before the Board. This format provides specific witness

testimony and specific exhibits supporting that testimony. The Board will require Iowa County to re-file its direct testimony and exhibit in the standard question-and-answer format.

South Slope also requested that the Board require Iowa County to submit a more specific statement as to the legal basis for its complaint. The Board will not require Iowa County to submit a more specific statement at this time because the re-filing of Iowa County's direct testimony and exhibits may satisfy this request.

IT IS THEREFORE ORDERED:

1. The motions for summary judgment filed by Iowa County E-9-1-1 Board on January 23, 2003, and by South Slope Cooperative Telephone Company on February 7, 2003, are denied as described in the body of this order.

2. The proceedings initiated under Docket No. FCU-02-12 are resumed.

3. The following amended procedural schedule is established for this proceeding:

a. Iowa County shall re-file prepared direct testimony, with supporting exhibits and workpapers, in the standard format used to submit such testimony, on or before April 21, 2003.

b. South Slope and any interveners not aligned with Iowa County's position in this matter shall file any responsive testimony, with supporting exhibits and workpapers, on or before May 12, 2003.

c. Iowa County and any interveners aligned with Iowa County shall file any rebuttal testimony, with supporting exhibits and workpapers, on or before June 2, 2003.

d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 10 a.m. on June 24, 2003, in the Board's hearing room at 350 Maple Street, Des Moines, Iowa. Parties shall appear one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

e. Any party desiring to file a brief may do so on or before July 14, 2003.

4. All other aspects of the original procedural schedule issued November 26, 2002, remain in effect.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of March, 2003.